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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF

PETITION TO AMEND
RULE 32.4, ARIZ. R. CRIM.P.

R-13-0010

ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL'S
COMMENTS TO PETITION TO AMEND
RULE 32.4, ARIZ.R.CRIM.P.

Pursuant to Arizona Rules of the Supreme Court, Rule 28(C), the Arizona Prosecution Attorneys' Advisory Council ("APAAC") hereby submits its comments to the Petition to Amend Rule 32.4, Arizona Rules of Criminal Procedure. APAAC respectfully objects to the proposed amendment.

I. Preface

In its current form, Rule 32.4 provides for the filing of a Petition for post-conviction relief ("PCR") in a capital case within 120 days from the filing of the notice of post-conviction relief. The proposed amendment would expand that 120-

day time limit to 18 months. APAAC objects to the proposed amendment because it guarantees unnecessary delay and incorrectly assumes Rule 32 proceedings are a forum to reinvestigate and relitigate cases. Moreover, the additional proposed time is contrary to the rights of crime victims to a prompt and final conclusion after conviction and sentencing.

II. General Observations Regarding the Proposed Rule

Rule 32 is a post-conviction remedy “designed to accommodate the unusual situation where justice ran its course and yet went awry.” *State v. Carriger*, 143 Ariz. 142, 146, 692 P.2d 991, 995 (1984). The scope of post-conviction proceedings is limited to the specific grounds for relief enumerated in Rule 32.1. *Id.* Rule 32 “allows a defendant to raise issues unknown or unavailable at trial” which, if proven, would demonstrate that “the conviction or sentence was obtained in disregard of fundamental fairness, which is essential to our concept of justice.” *State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990). Rule 32.2(a) is designed to preclude relief on several grounds “to prevent endless or nearly endless reviews of the same case in the same trial court.” *State v. Shrum*, 220 Ariz. 115, 118, ¶ 12, 203 P.3d 1175, 1178 (2009). The preclusion doctrine of Rule 32.2(a) emphasizes the importance of raising claims promptly, serves important principles of finality, and allows relief to be issued at a time when the interests of justice,

from the perspectives of the defendant, the State, and the victim, can be best served. *Id.*

Arizona law is clear that direct appeals, not Rule 32 Petitions, are the post-conviction proceedings of primary importance and are the preferred method for presenting claims of reversible error. *Carriger*, 143 Ariz. at 145, 692 P.2d at 994. Since Rule 32 was enacted in 1973, Arizona courts have consistently emphasized that the process is not designed to add to the law's delays by giving a convicted offender additional days in court where one is sufficient for doing substantial justice. *State v. Guthrie*, 111 Ariz. 471, 473, 532 P.2d 862, 864 (1975). *See also Carriger*, 143 Ariz. at 145-46, 692 P.2d at 994-95 (Petition for post-conviction relief is not designed to afford a second appeal or to unnecessarily delay the rendition of justice).

As Arizona case law makes clear, the Rule 32 process was not designed as a means to reinvestigate and re-litigate a case. The Petition's proposal only contributes to this delay by giving capital defendants six times as long to file their PCR Petition as they are given to file their direct appeal. *See* Rule 31.13(f)(1), Arizona Rules of Criminal Procedure (90 days from completion of the record to file opening brief). The Petition also proposes to give capital defendants nearly as much time to file their PCR Petition as they are given to prepare for trial. *See* Rule

8.2(a)(4) (trial to commence within 24 months from the filing of the notice of intent to seek the death penalty).

While the Rule 32 proceeding is part of the original criminal action, it is not the main event. Arizona Rules contemplate this by providing for the appointment of two qualified attorneys for capital defendants prior to trial. *See* Arizona Rules of Criminal Procedure 6.2 & 6.8. In addition, reasonable litigation expenses for trial are provided for capital defendants, including experts, investigators and mitigation specialists.

The Petition relies on the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to support its request to increase the time for filing petitions for post-conviction relief. Courts have consistently held, however, that the ABA requirements are simply guidelines for counsel to use—they do not establish the standard by which counsels' actions are governed. *See Bobby v. Van Hook*, 558 U.S. 4, 7 (2009) (American Bar Association standards are only guides to what reasonableness means, not its definition); *Yarborough v. Johnson*, 520 F.3d 329, 339 (4th Cir. 2008); *see also* Rule 6.8, 2006 cmt. (In exercising independent professional judgment, counsel should be guided by ABA standards, but deviation from the guidelines is not per se ineffective). Finally, the unnecessary delay proposed by the

Petition is contrary to a crime victim's right to a prompt and final conclusion of the case after conviction and sentence. Ariz. Const., Art. 2, § 2.1(A)(10).

Respectfully submitted this 20th day of May, 2013.

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